

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Earnest O. Wilson,
Petitioner

v. Case No. 1:06-cv-542

Jeffrey Wolfe,
Respondent

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed July 31, 2007 (Doc. 8).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Respondent's motion to dismiss is **GRANTED** to the extent that the claim alleged in Ground One of the petition is **DISMISSED** with prejudice as time-barred under 28 U.S.C. § 2244(d). Petitioner's remaining non-time-barred claims alleged in Grounds Two and Three of the petition are also **DISMISSED** with prejudice under Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts, 28 U.S.C. foll. § 2254.

A certificate of appealability will not issue with respect to this Order granting of the motion to dismiss Ground One of the petition with prejudice on procedural statute of limitations grounds, because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason would not find it

debatable whether this Court is correct in its procedural ruling” or whether the otherwise-barred ground for relief states a “viable claim of the denial of a constitutional right” or is “adequate to deserve encouragement to proceed further.” *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). *See also* 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

A certificate of appealability will not issue with respect to this Order summarily dismissing petitioner’s remaining claims alleged in Grounds Two and Three of the petition with prejudice under Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts, 28 U.S.C. foll. § 2254, because petitioner has not made a substantial showing of the denial of a constitutional right in either of these grounds.

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith and, therefore, denies petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3rd 949, 952 (6th Cir. 1997).

This action is closed.

Date: August 23, 2007

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Judge